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November 2, 2005

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Secretary Dortch;

On October 28, 2005, representatives of the law firm, Mintz Levin Cohn Ferris Glovsky & Popeo, PC and T-Mobile USA, Inc. filed an Ex Parte Presentation Notice with the Federal Communications Commission (FCC) stating that they met with members of the FCC's Consumer and Governmental Affairs Bureau to discuss FCC CG Docket No. 04-208, WT Docket No. 05-194, and CC Docket No. 98-170.

According to this filing, T-Mobile claimed at the meeting that T-Mobile's practice of term pricing and Early Termination Fees ("ETF") are similar to Consumers Union's ("CU") "online products rating service," which is how they refer to CU's subscription-based website, www.ConsumerReports.org.

T-Mobile's description of CU's subscription offers are simply inaccurate and the suggestion of any similarity between CU product offers and T-Mobile offers are grossly misleading.

T-Mobile claims that CU locks customers into "online products rating service" plans in exchange for lower rates, similar to the practice of wireless carriers that lock consumers into long-term plans in exchange for such things as free phones or flat-fee airtime pricing. The fact is that CU does not lock in consumers to any service arrangement and offers refunds when customers cancel subscriptions. Unlike the wireless carriers, CU does not penalize customers who no longer wish to avail themselves of our services and does not apply early termination fees.

As the publisher of *Consumer Reports*, CU is an independent, nonprofit testing and information organization serving only consumers. CU is a comprehensive source for unbiased advice about products and services, telecommunications services, personal finance, health and nutrition, and other consumer concerns. Since 1936, CU's mission has been to test products, inform the public, and protect consumers. Our income is derived solely from the sale of *Consumer Reports* and our other services, and from

noncommercial contributions, grants, and fees. It is for all of these reasons that CU holds itself to the highest standards and has put in place consumer protections for its customers.

Consumer Reports Online offers consumers the opportunity to purchase a subscription to the website for \$26/year or \$4.95/month. Before agreeing to the charges consumers are provided a User Agreement. Under “Fee-Based Service Charges,” Section 2 of the User Agreement, there is a specific provision that protects the consumer:

“If you purchase an annual site subscription to access the Fee-Based Services and cancel at any time during that subscription year, CU will refund the remainder of your subscription on a pro-rata basis that will cover the unused months of your subscription (partial months will not be refunded).”

At no point are consumers ever ‘locked in’ to CU services. T-Mobile’s and other wireless carriers limit competition in the cell phone market by “locking in” consumers or penalizing them for terminating their contracts by levying costly termination fees. Problems with billing advertising and contract termination top the list of consumer complaints filed at the FCC¹.

T-Mobile is trying to shift the focus of the early termination fees proceeding (ETF) by wrongly describing CU’s subscription offers to consumers. Indeed, CU would like to see T-Mobile and other wireless carriers adopt CU’s business practice of allowing consumers the option to cancel at any time during their subscription and not penalizing them for early termination.

Sincerely,



Morgan Jindrich

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¹ http://www.consumersunion.org/pub/0511%20FCC_Cell_ComplaintsAll3.pdf